



**SOLTEX
Polymer
Corporation**

A subsidiary of SOLVAY & Cie S.A. (Belgium)

RECORDATION NO. **14660** Filed 1425

MAY 30 1985 - 3 10 PM

INTERSTATE COMMERCE COMMISSION

No. **5-150A086**

Date **MAY 30 1985**

Fee \$ **10.00**

ICC Washington, D.C.

May 23, 1985

Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Secretary:

Enclosed for filing is a railroad hopper car lease. The information required by the regulations is as follows:

1. This is a lease of railroad hopper cars.
2. The enclosed is a primary document.
3. This should be cross-indexed under the names of National Funding Corporation, Soltex Polymer Corporation, Texas Commerce Bank National Association and First Nationwide Savings.
4. The equipment involved is 90 railroad hopper cars manufactured by Thrall Car Manufacturing Company to specification HC-100-58-109B 10/11/83
5. The cars are marked with the initials ELTX and the numbers 1000 through 1089.
6. If any document is to be returned, it should be returned to E. J. Buckingham III, Soltex Polymer Corporation, 3333 Richmond Avenue, Houston, Texas 77098. Any questions should be addressed to Mr. Buckingham as well. His telephone number is (713) 522-1781.
7. Enclosed is a check for \$10.00 representing the filing fee.
8. This is a ¹/₂-year lease of 90 covered railroad hopper cars, ELTX 1000 through 1089, by National Funding Corporation to Soltex Polymer Corporation.

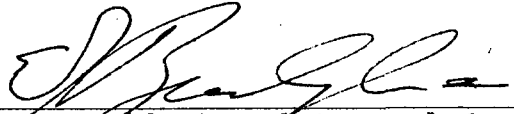
3333 Richmond Avenue / Houston, Texas 77098 / TWX: (910) 881-5788 / 1-(800)-231-6313 / In Texas: (713) 522-1781
ejb85104 Mailing Address: P.O. Box 27328 / Houston, Texas 77227

Customer Order Services: 1-(800)-527-5419

Please advise me by telephone if there are any problems with this filing.

Very truly yours,

SOLTEX POLYMER CORPORATION

By 
Vice President and General Counsel

Lessor: National Funding Corporation
3200 Park Center Drive
Costa Mesa, CA 92626
Attention: Vice President/Finance

Lessee: Soltex Polymer Corporation
3333 Richmond Avenue
Houston, Texas 77098
Attention: Treasurer

Interstate Commerce Commission
Washington, D.C. 20423

5/30/85

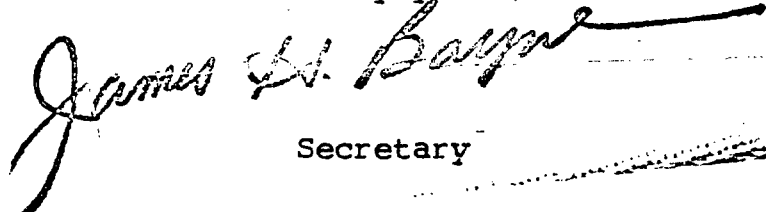
OFFICE OF THE SECRETARY

E.J. Buckingham III
Soltex Polymer Corp.
3333 Richmond Ave.
Houston, Texas 77098

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/30/85 at 3:10pm and assigned re-recording number(s).14660

Sincerely yours,


Secretary

Enclosure(s)

14660

RECORDATION NO. Filed 1425

MAY 30 1985 -3 10 PM

INTERSTATE COMMERCE COMMISSION

MASTER LEASE AGREEMENT

dated as of May 22, 1985

Between

NATIONAL FUNDING CORPORATION
as Lessor

and

SOLTEX POLYMER CORPORATION
as Lessee

Lease of
Ninety (90) New Covered Hopper Cars

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MASTER LEASE AGREEMENT

This MASTER LEASE AGREEMENT, dated as of May 22, 1985, between NATIONAL FUNDING CORPORATION, a California corporation ("Lessor"), and SOLTEX POLYMER CORPORATION, a Delaware corporation ("Lessee").

1. Lease.

(a) Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor hereunder, those items of personal property (which, together with any and all improvements, replacements, changes, accessions, additions, or alterations from time to time incorporated therein or installed thereon shall be called herein the "Equipment") which are described generally on Exhibit A hereto and which are more specifically identified in the Supplement executed by the parties hereto in the form of Exhibit B hereto (the "Supplement"). Each item of Equipment shall be subjected to this Lease by the execution and delivery to Lessor of the Supplement. Lessee's execution and delivery to Lessor of the Supplement with respect to any item of Equipment shall constitute Lessee's irrevocable acceptance of such item of Equipment for all purposes of this Lease. The Supplement shall incorporate therein all of the terms and conditions of this Lease and shall constitute a part of this Lease to the same extent as if the provisions thereof were set forth in full herein.

(b) Lessee shall arrange for delivery and installation of each item of Equipment and Lessor shall have no responsibility or obligation whatsoever with respect to such arrangement.

(c) Lessor shall not be obligated to accept or execute the Supplement unless all of the conditions set forth in Section 23 hereof shall have been fulfilled to the satisfaction of Lessor. Lessor shall not be obligated to accept or execute the Supplement after May 22, 1985, and shall not be obligated to accept or execute the Supplement if it causes the Lessor's Cost (as hereinafter defined) of all Equipment to exceed \$5,060,000. Not more than one Supplement shall be delivered hereunder.

2. Definitions.

(a) As used in this Lease, the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural format of the terms defined):

"ACRS Deductions" shall have the meaning set forth in Section 10(b)(i) hereof.

"Amortization Deductions" shall have the meaning set forth in Section 10(b)(i) hereof.

"Code" shall mean the Internal Revenue Code of 1954, as amended, or any comparable successor law.

"Commencement Date" shall have the meaning set forth in Section 3 hereof.

"Default" shall mean any event or condition which after the giving of notice or lapse of time or both would become an Event of Default.

"Equipment" shall have the meaning set forth in Section 1(a) hereof.

"Event of Default" shall have the meaning set forth in Section 17 hereof.

"Event of Loss" shall mean, with respect to any item of Equipment, the actual or constructive total loss of such item of Equipment or the use thereof, due to theft, destruction, damage beyond repair or rendition thereof permanently unfit for normal use from any reason whatsoever, or the condemnation, confiscation or seizure of, or requisition of title to or use of, such item of Equipment.

"Fair Market Sale Value" shall, at any time with respect to any item of Equipment, be equal to the sale value of such item of Equipment which would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer-user (other than a lessee currently in possession or a used equipment or scrap dealer). For purposes of Section 6(b) hereof, Fair Market Sale Value shall be determined by an independent appraiser (at Lessee's expense) selected by Lessor, which determination shall be made (a) without deduction for any costs or expenses of dismantling or removal; and (b) on the assumption that such item of Equipment is free and clear of all Liens and is in the condition and repair in which it is required to be returned pursuant to Section 6(a) hereof. For purposes of Section 18(c) hereof, Fair Market Sale Value shall be determined (at Lessee's expense) by an independent appraiser selected by Lessor, on an "as-is, where-is" basis, without regard to the provisions of clauses (a) and (b) above; provided, that, if Lessor or Lender shall have sold any item of Equipment pursuant to Section 18(b) hereof prior to giving the notice referred to in Section 18(c) hereof, Fair market Sale Value of such item of Equipment shall be the net proceeds of such sale after deduction of all costs and expenses incurred by Lessor and/or Lender in connection therewith; provided, further, that if for any reason Lessor or Lender, is not able to obtain possession of any item of Equipment pursuant to Section 18(a) hereof or for any reason elects not to obtain possession of any item of Equipment, the Fair Market Sale Value of such item of Equipment shall be zero.

"Imposition" shall have the meaning set forth in Section 10(a) hereof.

"Indemnatee" shall have the meaning set forth in Section 10(b)(i) hereof.

"Interest Deductions" shall have the meaning set forth in Section 10(b)(i) hereof.

"Investment Tax Credit" shall have the meaning set forth in Section 10(b)(i) hereof.

"Lease" and the terms "hereof", "herein", "hereto" and "hereunder", when used in this Master Lease Agreement, shall mean and include this Master Lease Agreement and the Supplement, as the same may from time to time be amended, modified or supplemented.

"Lease Term" shall mean, with respect to any item of Equipment, the term of the lease of such item of Equipment hereunder specified in Section 3 hereof.

"Lender" shall mean First Nationwide Savings, a Federal savings and loan association.

"Lender's Lien" shall mean the security interest in the Equipment granted by the Lessor to Lender under the Loan Agreement and all other rights and interests granted or assigned to Lender by Lessor as collateral security for the repayment of the Note.

"Lessee" shall have the meaning set forth in the introductory paragraph to this Lease.

"Lessor" shall have the meaning set forth in the introductory paragraph of this Lease.

"Lessor's Cost" shall mean, with respect to any item of Equipment, the total amount paid or incurred by Lessor for such item of Equipment, which amount shall be set forth in the Supplement and which amount shall in no event exceed the tax basis that would have been available to Lessee had it been the owner of the Equipment.

"Liens" shall mean any mortgage, pledge, lien, security interest, charge, encumbrance, financing statement, title retention or any other right or claim of any person.

"Loan Agreement" shall mean that certain Loan and Security Agreement dated as of May __, 1985 by and between Lender as secured party and Lessor as debtor, as the same may from time to time be amended, modified, or supplemented.

"Loss Payment Date" shall mean with respect to any item of Equipment the thirtieth day after the occurrence of an Event of Loss.

Event of Loss with respect to such item. The Loss Payment Date shall be within thirty (30) days of the said Event of Loss.

"Note" shall mean that certain secured nonrecourse promissory note to be executed by Lessor in favor of Lender under the terms of the Loan Agreement.

"Prime Rate" shall mean the rate publicly announced from time to time as the base rate of Bank of America NT & SA; the Prime Rate shall be determined by Lessor at the close of business on the 15th day of each calendar month and shall become effective as of the first day of the calendar month succeeding such determination and shall continue in effect to, and including, the last day of said calendar month.

"Recovery Deductions" shall have the meaning set forth in Section 10(b)(i) hereof.

"Rent Payment Date" shall mean each date on which an installment of rent is due and payable pursuant to Section 4 hereof.

"Stipulated Loss Value" shall mean, with respect to any item of Equipment, the amount determined by multiplying Lessor's Cost of such item of Equipment by the percentage set forth in Schedule A hereto opposite the applicable Rent Payment Date.

"Supplement" shall have the meaning set forth in Section 1(a) hereof.

"Tax Benefits" shall have the meaning set forth in Section 10(b)(i) hereof.

"Trustee" shall mean Texas Commerce Bank National Association as trustee of the National Funding Equipment Trust.

(b) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

3. Term. The term of the lease of the Equipment shall commence on the Commencement Date specified in the Supplement ("Commencement Date") and, unless earlier terminated pursuant to the provisions hereof, shall continue for a term of two hundred and sixteen (216) months from the Commencement Date.

4. Rent; Trustee's Fees and Costs; Unconditional Obligations.

(a) Lessee shall pay to Lessor or as otherwise directed rent for each item of Equipment in two hundred and sixteen (216) consecutive monthly installments of rent with respect to such item of Equipment being due in arrears with the first payment due one month after the Commencement Date and succeeding installments being due on the same date of each

month thereafter. Each installment of rent with respect to the Equipment shall be payable at the office of Lessor specified in Section 22 hereof or at such other place as Lessor shall direct and shall, for the first through the seventy-fourth payments, be an amount equal to .80089 percent of the total Lessor's Cost of such items of Equipment, as set forth in the Supplement covering such Equipment, and shall, for the seventy-fifth through the two hundred sixteenth payments, be an amount equal to .97886 percent of the Total Lessor's Cost of such items of Equipment, as set forth in the Supplement covering such Equipment.

(b) Lessee shall also pay to Lessor, on demand, interest at a rate per annum equal to:

(A) the higher of (i) two percent (2%) over the Prime Rate or (ii) eighteen percent (18%) or

(B) if lower than (A), the highest rate of interest permitted by applicable law,

on any installment of rent and on any other amount owing hereunder which is not paid when due, for any period which the same shall be overdue. Each payment made under this Lease shall be applied first to the payment of interest then owing (as set forth hereinabove in this Section 4(a)) and then to rent or other amounts owing hereunder. Interest shall be computed on the basis of a 360-day year and actual days elapsed.

(c) At Lessee's request, Lessor will transfer all of its right, title and interest in and to the Equipment, subject to the Lease, the Loan Agreement and other documents and agreements contemplated thereby, in trust to the Trustee. The grantor trust formed by such transfer shall be known as the National Funding Equipment Trust. In consideration for placing its Equipment in trust, Lessee shall, on behalf of Lessor, pay to Trustee when due all of Trustee's fees or costs (including attorneys' fees) charged or incurred in connection with the formation, operation and termination of the National Funding Equipment Trust. Each payment by Lessee hereunder shall be payable at the office of the Trustee specified in Section 22 hereof or at such other place as Trustee shall direct.

(d) This Lease is a net lease, and, except in case of a breach of Section 26 hereof, in which case Lessee may withhold from Lessor, but not Lender or any other assignee of Lessor, rent for the affected Equipment, Lessee's obligation to pay all rent and all other amounts payable hereunder is ABSOLUTE AND UNCONDITIONAL under any and all circumstances whatsoever, including, without limitation, (i) any set-off, counterclaim, recoupment, defense, abatement, or reduction or any right which Lessee may have against Lessor, Lender, the manufacturer or supplier of any of the Equipment, or anyone else for any reason whatsoever; (ii) any defect in the title, condition, design, or operation of, or lack of fitness for use of, or any damage to, or loss of, all or any part of the Equipment from any cause whatsoever; (iii) the existence of any Liens with respect to the Equipment;

(iv) the invalidity, unenforceability, or disaffirmance of this Lease, the Supplement or any other document related hereto; or (v) the prohibition of or interference with the use of possession by Lessee of all or any part of the Equipment, for any reason whatsoever, including without limitation, by reason of (1) claims for patent, trademark, or copyright infringement; (2) present or future governmental laws, rules or orders; (3) the insolvency, bankruptcy, or reorganization of any person; and (4) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Equipment. If for any reason whatsoever this Lease or the Supplement shall be terminated in whole or in part by operation of law or otherwise, other than pursuant to Section 15(b) hereof or by breach of Section 26 hereof, Lessee will nonetheless pay to Lessor an amount equal to each installment of rent at the time such installment would have become due and payable in accordance with the terms hereof. Each payment of rent or other amount paid by Lessee hereunder shall be final and Lessee will not seek to recover all or any part of such payment from Lessor or from Lender for any reason whatsoever.

5. Disclaimer; Assignment of Warranties.

(a) NEITHER LESSOR NOR LENDER MAKES NOR SHALL BE DEEMED TO HAVE MADE OR GIVEN, AND THEY BOTH HEREBY EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, QUALITY OR CONDITION OF THE EQUIPMENT OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR ANY WARRANTY OR REPRESENTATION AS TO THE TITLE TO OR LESSOR'S OR LESSEE'S INTEREST IN THE EQUIPMENT OR AS TO ANY OTHER MATTER RELATING TO THE EQUIPMENT OR ANY PART THEREOF. LESSEE CONFIRMS THAT IT HAS SELECTED THE EQUIPMENT AND EACH PART THEREOF ON THE BASIS OF ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENT, REPRESENTATIONS OR WARRANTIES MADE BY LESSOR OR BY LENDER, AND LESSEE ACKNOWLEDGES THAT NEITHER LESSOR NOR LENDER, IS A MANUFACTURER OR VENDOR OF ANY PART OF THE EQUIPMENT. Neither Lessor nor Lessee has made or shall be construed to have made any representation or warranty to the other as to the accounting or tax treatment to be accorded to this Lease (other than the representations and warranties made by Lessee in Sections 7 and 10(b) hereof and by Lessor in Section 25 hereof).

(b) Lessor hereby assigns to Lessee such rights as Lessor may have (to the extent Lessor may validly assign such rights) under all manufacturers' and suppliers' warranties with respect to the Equipment; provided, however, that the foregoing rights shall automatically revert to Lessor upon the occurrence and during the continuance of any Event of Default hereunder, or upon the return of the Equipment to Lessor. Lessee agrees

to settle all claims with respect to the Equipment directly with the manufacturers or suppliers thereof, and to give Lessor and Lender prompt notice of any such settlement and the details of such settlement.

6. Expiration of Lease Term.

(a) **Return.** Lessee shall, upon the expiration of the Lease with respect to any item of the Equipment, return such item of Equipment to Lessor at Lessee's tracks at its plant in Harris County, Texas or such place within the continental United States of America as Lessor and Lessee shall agree upon in writing (unless Lessee exercises its option to purchase the Equipment under Section 6(b) hereof, in which case Lessee shall be under no obligation to return to Lessor any item of Equipment so purchased). Until such item of Equipment is returned to Lessor pursuant to the provisions of this Section, all of the provisions of this Lease with respect thereto shall continue in full force and effect. Lessee shall pay all the costs and expenses in connection with or incidental to the return of the Equipment, including, without limitation, the cost of removing, assembling, packing, insuring and transporting the Equipment. At the time of such return, the Equipment shall be in the condition and repair required to be maintained by Section 11 hereof and free and clear of all Liens and rights of others (other than Lender's Lien). Upon the expiration or termination of the Lease with respect to any item of Equipment, Lessee shall provide to Lessor without charge, storage for such item of Equipment for a period of up to 30 days, and during such period shall keep in force insurance on such Equipment in accordance with Section 9 hereof and shall continue to bear the risk of Loss with respect to such Equipment.

(b) **Purchase Option.** So long as no Default or Event of Default shall have occurred and be continuing, Lessee may, by written notice given to Lessor at least 180 days (but not more than 360 days) prior to the expiration date of the Lease Term (which notice shall be irrevocable), elect to purchase all items of Equipment leased hereunder on such expiration date for a cash purchase price equal to the Fair Market Sale Value of such Equipment determined as of such expiration date. Upon payment by Lessee of such purchase price, and of all other amounts then due and payable by Lessee hereunder, Lessor shall transfer title to such Equipment to Lessee on an "as-is, where-is" basis, without recourse and without representation or warranty of any kind, express or implied, except that Lessor shall represent that the Equipment is free and clear of all Liens placed thereon by the Lessor (including Lender's Lien), or with respect to the Lessor and unrelated to this transaction.

(c) **Renewal Option.** Upon at least 180 days prior written notice and provided no Event of Default or an event which but for the passage of time or the giving of notice, or both, would be an Event of Default has occurred and is continuing, Lessee shall be entitled at the end of the term of this Lease to renew this Lease with respect to all of the Equipment then

under this Lease for a term, at a rent equal to fair market rental of the Equipment and on the terms and conditions to be agreed upon by the parties.

7. Lessee's Representations and Warranties. In order to induce Lessor to enter into this Lease and to lease the Equipment to Lessee hereunder, Lessee represents and warrants to Lessor and Lender that:

(a) **Organization.** Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) **Power and Authority.** Lessee has full power, authority and legal right to execute, deliver and perform this Lease, and the execution, delivery and performance hereof has been duly authorized by all necessary corporate action of Lessee.

(c) **Enforceability.** This Lease has been fully executed and delivered by Lessee and constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms.

(d) **Consents and Permits.** The execution, delivery and performance of this Lease does not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of Lessee and will not contravene any law, regulation, judgment or decree applicable to Lessee, or the certificate of incorporation or by-laws of Lessee, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon any property of Lessee under any mortgage, instrument or other agreement to which Lessee is a party or by which Lessee or its assets may be bound or affected; and no authorization, approval, license, filing or registration with any court or governmental agency or instrumentality is necessary in connection with the execution, delivery, performance, validity and enforceability of this Lease.

(e) **Financial Condition of the Lessee.** The financial statements of Lessee heretofore furnished to Lessor and Lender are complete and correct and fairly present the financial condition of Lessee and the results of its operations for the respective periods covered thereby, there are no known contingent liabilities or liabilities for taxes of Lessee which are not reflected in said financial statements and since the date thereof, there has been no material adverse change in such financial condition or operation.

(f) **Title to Equipment.** On each Commencement Date, Lessor shall have good and marketable title to the items of Equipment being subjected to this Lease on such date, free and clear of all Liens other than Lender's Lien or any other Lien placed thereon by the affirmative act of Lessor.

(g) **No Litigation.** There is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against or affecting

Lessee (A) which involves the transactions contemplated by this Lease or the Equipment; or (B) which, if adversely determined, could have a material adverse effect on the financial condition, business or operations of Lessee.

(h) **New Section 38 Property.** Each item of Equipment will constitute "new Section 38 property" in the hands of Lessor within the meaning of the Code.

(i) **Original Use.** At the time Lessor becomes the owner of the Equipment, the Equipment will not have been placed in service by Lessee nor have been used by any person so as to preclude "the original use of such property" within the meaning of Section 167(c) of the Code from commencing with Lessor.

(j) **Estimated Useful Life.** The estimated useful life of the Equipment is equal to at least 125% of the Lease Term.

(k) **Residual Value.** The estimated fair market value of each item of Equipment at the end of the Lease Term is at least 20% of the Lessor's Cost thereof (without including in such value any increase or decrease for inflation or deflation, and after subtracting from such value any cost for removal and delivery of possession of such item of Equipment to Lessor at the end of the Lease Term).

(l) **Recovery Property.** Each item of the Equipment subject to the Lease constitutes "recovery property" and "5-year property" as defined in Section 168(c) of the Code and Lessee has not claimed any Investment Tax Credit, ACRS Deductions or Recovery Deductions with respect thereto.

(m) **Tax Exempt Use.** The Equipment will not, in whole or in part, be used by a tax-exempt organization within the meaning of Section 48(a)(4) of the Code.

(n) **Governmental Use.** The Equipment will not, in whole or in part, be used by a governmental unit within the meaning of Section 48(a)(5) of the Code.

(o) **Nonseverable Improvements.** As of the date hereof, no "Nonseverable Improvement" as defined in Rev. Proc. 79-48 is required to complete the Equipment for its intended use.

(p) **Lessor's Basis.** Lessor's tax basis under Section 1012 of the Code and related sections of California law will be equal to the Lessor's Cost of the Equipment, with respect to such Equipment, and such basis will include the portion of the Lessor's Cost financed by the Note to be issued by the Lessor.

(q) **United States Source Income.** No items of Equipment shall be used in a way that results in the creation of an item of income to

Lessor, the source of which for Federal Income tax purposes is without the United States.

(r) **Property Not of Limited Use.** The Equipment is of a type which would readily be usable by other firms in the industry in which Lessee is engaged, and is not "limited use property" within the meaning of Revenue Procedure 76-30 (1976-2 C.B. 647).

(s) **Use of Equipment.** The per item average use of the items of Equipment will not exceed 10,000 loaded miles per annum and no item of Equipment will be used "predominately outside the United States" within the meaning of Sections 168(f)(2) and 48(a)(2) of the Code.

(t) Lessee is in full compliance with all applicable laws, rules, regulations and other requirements of the Interstate Commerce Commission and the American Association of Railroads and shall continue to be in such compliance subsequent to the execution, delivery and performance of this Lease.

8. **Liens.** Lessee will not directly or indirectly create, inure, assume or suffer to exist any Lien on or with respect to the Equipment, other than Lender's Lien. Notwithstanding the foregoing, should any such lien be placed upon any item of Equipment, Lessee shall promptly take all steps necessary to remove the lien.

9. **Insurance.**

(a) **Amount.** Lessee shall obtain and maintain liability insurance and, except as otherwise provided herein, insurance against loss or damage to the Equipment, including, without limitation, loss by fire (including "extended coverage"), theft and such other risks of loss as are customarily insured against on the type of equipment leased hereunder and by businesses similar to that in which the Equipment is to be employed by Lessee in such amounts, in such form and with such insurers as shall be reasonably satisfactory to Lessor; provided, however, that the amount of insurance against loss or damage of the Equipment shall in no event be less than the full replacement value of the Equipment. Notwithstanding the foregoing, Lessee may self-insure against loss or damage to any item of Equipment during any period of time that such item of Equipment is located on the premises of Lessee's plant in Harris County, Texas. In no event, however, shall this right to self-insure extend to Lessee's obligation to maintain liability insurance or Lessee's obligation to maintain insurance against loss or damage to any item of Equipment while such item of Equipment is located anywhere outside of Lessee's plant at Harris County, Texas. Each insurance policy shall name Lessee as an insured and Lessor and any Lender as additional insureds and, in the case of the insurance against loss or damage to the Equipment, loss payees thereof, as their respective interests may appear, and shall contain a clause requiring the insurer to give Lessor and Lender at least thirty (30) days' prior written notice of any alteration in the terms of such policy or of the cancellation thereof. In addition, each

insurance policy obtained and maintained pursuant to this Section, and any policies taken out in substitution of any such policies, (i) shall, in the case of the insurance against loss or damage to the Equipment, provide that in respect of the interests of Lessor in such policies the insurance shall not be invalidated by any action or inaction of Lessee or any other person (except Lessor) and shall insure Lessor regardless of any breach or violation of any warranty, declaration or condition in such policies by Lessee or any other person (except Lessor) and (ii) in the case of both liability insurance and insurance against loss or damage to the Equipment, shall provide that Lessor and Lender shall not be liable for the payment of any premiums with respect thereto. Notwithstanding the foregoing, should any insurance required to be maintained pursuant to this Section be invalidated by any action or inaction of Lessee or any other person (except Lessor) which results in the insurance not covering any loss or damage relating to the Equipment or other liability, then Lessee shall directly be obligated to reimburse Lessor for such loss or damage or to satisfy such liability. Failure of Lessee to do so in a timely manner shall be deemed an Event of Default under this Lease. Concurrently with the execution of this Lease, Lessee shall furnish Lessor and any Lender with certificates of insurance as evidence of compliance with the above requirements and stating that not less than thirty (30) days written notice will be given to Lessor and any Lender prior to any alteration in the terms of the policies or of any cancellation thereof. Such insurance shall be maintained until all sums due hereunder have been paid.

(b) **Proceeds.** Provided no Event of Default or an event which with the passage of time or the giving of notice, or both, would constitute an Event of Default has occurred and is continuing, if Lessee elects to repair any item of the Equipment suffering a Loss as specified in Section 15(a) hereof, Lessor and any Lender shall pay to Lessee any insurance proceeds received pursuant to Section 9(a) hereof to the extent necessary to pay the cost of repairing such Equipment, which Lessee shall apply solely to the repair of such Equipment.

(c) **Performance by Lessor.** In the event that Lessee shall fail to maintain insurance as herein required, Lessor may at its option, but without obligation, provide such insurance and, in such event, Lessee shall, upon demand from time to time, reimburse Lessor for the cost thereof, together with interest on such cost at the rate of interest specified in Section 4(b) hereof computed from the date of payment of such cost to the date of actual reimbursement.

(d) **Separate Insurance.** Nothing in this Section 6 shall be construed to prohibit Lessor or any Lender from insuring at its own expense the Equipment or any portion thereof.

10. Taxes.

(a) **General Tax Indemnity.** Lessee shall pay, and shall indemnify and hold Lessor harmless from and against, all fees, taxes (whether

sales, use, excise, personal property or other taxes), imposts, duties, withholding, assessments and other governmental charges of whatever kind or character, however designated (together with any penalties, fines or interest thereon), all of the foregoing being herein collectively called "Impositions", which are at any time levied or imposed against Lessor, Lessee, this Lease, the Equipment or any part thereof by any federal, state or local government or taxing authority in the United States or any subdivision or taxing authority thereof upon, with respect to, as a result of or measured by (i) the Equipment (or any part thereof), or this Lease or the interest of the Lessor therein; or (ii) the purchase, ownership, delivery, leasing, possession, maintenance, use, operation, return, sale or other disposition of the Equipment or any part thereof; or (iii) the rentals, receipts or earnings payable under this Lease or otherwise arising from the Equipment or any part thereof; excluding, however, taxes based on or measured by the net income of Lessor that are imposed by (1) the United States of America, or (2) the state in which Lessor maintains its principal place of business or any political subdivision of such state, or (3) any other state of the United States of America but, in the case of taxes imposed by such other state, only to the extent that taxes on or measured by the net income of Lessor that are imposed by the state in which Lessor maintains its principal place of business are diminished (A) by way of a credit for, or deduction of, taxes on or measured by the net income of Lessor paid to such other state in respect of income received hereunder, or (B) by reason of Lessor's having allocated the income received hereunder as income received from such other state. Lessor agrees that any tax return filed with the state in which Lessor maintains its principal place of business with respect to such taxes shall reflect such credit, deduction, or allocation (as the case may be) to the extent permitted under the applicable statutes and regulations of such state. In case any report or return is required to be filed with respect to any obligation of Lessee under this Section 10(a) or arising out of this Section 10(a), Lessee will make such report or return in such manner as will comply with the requirements of applicable law and will show the ownership of the Equipment in Lessor and, upon the reasonable request of Lessor, send a copy of such report or return to Lessor; provided that the payment of any use taxes shall be made in such manner as specified by Lessor in writing to Lessee. The obligations of Lessee under this Section 10(a) shall survive the expiration or other termination of this Lease.

(b) Special Tax Indemnities.

(i) Lessor, as the owner of the items of Equipment, shall be entitled to take into account in computing its Federal and state income tax liability the following deductions, credits, and other benefits as are provided by the Code and applicable state law to an owner of property (collectively the "Tax Benefits"):

(A) An Investment Tax Credit under Section 38 of the Code (the "Investment Tax Credit") in an amount equal to 8% or 10% of the Lessor's Cost of each item of Equipment, as elected by Lessor;

(B) Deductions for accelerated cost recovery of Lessor's Cost (reduced by fifty percent (50%) of the Investment Tax Credit, if ten percent (10%) Investment Tax Credit is elected) (the "ACRS Deductions") computed on the basis provided for "five-year property" by Section 168(b)(1) of the Code for federal income tax purposes and depreciation deductions ("Recovery Deductions") based on the useful life of the Equipment for California state tax purposes;

(C) Amortization of expenses ("Amortization Deductions") paid or to be paid by Lessor in connection with this Lease at a rate no less rapid than straight-line over the Lease term; and

(D) Interest Deductions ("Interest Deductions") with respect to all amounts paid or accrued as interest on the Note.

(ii) If Lessor as a result of any act, omission or misrepresentation of Lessee, shall lose, shall not have or shall lose the right to claim, or there shall be disallowed or recaptured all or any portion of the Tax Benefits, then Lessee agrees to pay Lessor upon demand an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States shall be equal to the sum of (A) the amount of the Investment Tax Credit lost or not so utilized; (B) the amount of the increase in Lessor's tax attributable to any recomputation of Investment Tax Credit pursuant to Section 47 (or any successor section) of the Code; (C) the amount of additional income taxes paid or payable by Lessor in consequence of the failure to obtain the benefit of the ACRS Deductions, Recovery Deductions, Amortization Deductions or Interest Deductions; and (D) any interest or penalty which may be assessed in connection with any of the foregoing.

(iii) Lessee shall not be required to pay Lessor the amount provided for in (ii) above if the loss, disallowance, or recapture of Tax Benefits or the right to claim the same shall result solely because of the occurrence of any of the following events:

(A) Lessee is required by the terms hereof to pay and shall have paid the Stipulated Loss Value of said item of Equipment;

(B) A voluntary transfer or other voluntary disposition by Lessor of any interest in this Lease or any item of Equipment for Federal income tax purposes (other than the assignment of the Lease to Lender as contemplated by Section 20(b) hereof);

(C) The failure of Lessor to claim the Tax Benefits;

(D) The failure of Lessor to have sufficient liability for tax within the meaning of Section 46 of the Code against which to credit the Investment Tax Credit or to have sufficient gross income within the meaning of Section 61(a) of the Code and comparable provisions of California state

law to benefit from the ACRS Deductions, Recovery Deductions, Amortization Deductions, or Interest Deductions, as the case may be; or

(E) The failure of Lessor to observe its representations and warranties contained in Section 25 hereof.

(iv) If for any reason Lessor is required to include in its gross income for Federal, state or local income tax purposes at any time with respect to any item of Equipment (unless entitled to an equal deduction in the same taxable year) any part or all of the cost of (A) any repairs and maintenance of any item of Equipment, (B) any alterations, modifications, improvements or additions to any item of Equipment, or (C) any other expenditures by Lessee with respect to any item of Equipment, then Lessee shall pay Lessor, upon demand, the sum of (1) the amount of any increase in Lessor's Federal, state and local income taxes resulting from the inclusion of such costs in the gross income of Lessor, such amount to be decreased by any savings by Lessor in such taxes resulting from such costs, (2) the amount of any interest or penalties, including any addition to tax due to the underpayment of estimated taxes, assessed against Lessor in connection therewith, and (3) the amount of any taxes required to be paid by Lessor in respect of the receipt of amounts specified in clauses (1) and (2) above and this clause (3).

(v) For the purposes of this subsection 10(b) only, the term "Lessor" shall include the "common parent" and all other corporations included in the affiliated group, within the meaning of Section 1504 of the Code (or any other successor section thereto), of which Lessor is or becomes a member.

(vi) The provisions of this subsection 10(b) shall survive the expiration or earlier termination of this Agreement.

11. Compliance with Laws; Operation and Maintenance; Additions.

(a) Lessee will use the Equipment in a careful and proper manner, will comply with and conform to all governmental laws, rules and regulations relating thereto, and will cause the Equipment to be operated in accordance with the manufacturer's or supplier's instructions or manuals and the rules and regulations of the American Association of Railroads.

(b) Lessee will, at its own expense, keep and maintain the Equipment in good repair, condition and working order and furnish all parts, replacements, mechanisms, devices and servicing required therefor so that the value, condition and operating efficiency therefor will at all times be maintained and preserved, reasonable wear and tear excepted. All such repairs, parts, mechanisms, devices and replacements shall immediately, without further act, become the property of Lessor and part of the Equipment.

(c) Lessee will not make or authorize any improvement, change, addition or alteration to the Equipment (i) if such improvement, change, addition or alteration will impair the originally intended function or use of the Equipment or impair the value of the Equipment as existed immediately prior to such improvement, change, addition or alteration; or (ii) if any parts installed in or attached to or otherwise becoming a part of the Equipment as a result of any such improvement, change, addition or alteration shall not be readily removable without damage to the Equipment unless such improvement, change, addition, or alteration is required by applicable Federal regulation or the rules and regulations of the American Association of Railroads. Any part which is added to the Equipment without violating the provisions of the immediately preceding sentence and which is not a replacement or substitution for any property which was a part of the Equipment, shall remain the property of Lessee and may be removed by Lessee at any time prior to the expiration or other termination of the Lease Term, provided that the removal of such part does not result in damage to the Equipment. All such parts shall be and remain free and clear of any Liens. Any such part which is not so removed prior to the expiration or other termination of the Lease Term shall, without further act, become the property of Lessor.

12. **Inspection.** Lessor, Lender, or the authorized representatives of either may at any reasonable time or times inspect the Equipment.

13. **Identification.** Upon the request of Lessor in writing, Lessee shall, at its expense, attach to each item of Equipment a notice satisfactory to Lessor disclosing Lessor's ownership of such item of Equipment; upon the request of Lender in writing, Lessee shall, at its expense, attach to each item of Equipment a notice satisfactory to Lender disclosing Lender's Lien on such item of Equipment.

14. **Personal Property.** Lessee represents that the Equipment shall be and at all times remain separately identifiable personal property. Lessee shall, at its expense, take such action (including the obtaining and recording of waivers) as may be necessary to prevent any third party from acquiring any right to or interest in the Equipment by virtue of the Equipment being deemed to be real property or a part of real property or a part of other personal property, and if at any time any person shall claim any such right or interest, Lessee shall, at its expense, cause such claim to be waived in writing or otherwise eliminated to Lessor's and Lender's satisfaction within thirty (30) days after such claim shall have first become known to Lessee.

15. **Loss or Damage.**

(a) All risk of loss, theft, damage or destruction to the Equipment or any part thereof, however incurred or occasioned, shall be borne by Lessee and, unless such occurrence constitutes an Event of Loss pursuant to paragraph (b) of this Section, Lessee shall promptly give Lessor and Lender written notice thereof and shall promptly cause the affected part or

parts of the Equipment to be replaced or restored to the condition and repair required to be maintained by Section 11 hereof.

(b) If an Event of Loss with respect to any item of Equipment shall occur, Lessee shall promptly give Lessor and Lender written notice thereof, and Lessee shall pay to Lessor on or before the Loss Payment Date an amount equal to the sum of (i) the Stipulated Loss Value of such item of Equipment computed as of the Rent Payment Date with respect to such item of Equipment on or immediately preceding the date of the occurrence of such Event of Loss; and (ii) all rent and other amounts due and owing hereunder for such item of Equipment on or prior to the Loss Payment Date. Upon payment of such amount to Lessor, the lease of such item of Equipment hereunder shall terminate, and Lessor will transfer to Lessee, on an "as-is, where-is" basis, without recourse and without representation or warranty, express or implied, Lessor's right, title and interest in and to such item of Equipment.

(c) Any payments received at any time by Lender, Lessor or Lessee from any insurer with respect to loss or damage to the Equipment shall be applied as follows: (i) if such payments are received with respect to the Event of Loss they shall be paid to the Lessor or Lender, but to the extent received by Lessor or Lender, they shall reduce or discharge, as the case may be, Lessee's obligation to pay the amounts due to Lessor under Section 15(b) hereof with respect to such Event of Loss; or (ii) if such payments are received with respect to any loss of or damage to the Equipment other than an Event of Loss, such payments shall, unless a Default or Event of Default shall be occurred and be continuing, be paid over to Lessee to reimburse Lessee for its payment of the costs and expenses incurred by Lessee in replacing or restoring pursuant to Section 15(a) hereof the part or parts of the Equipment which suffered such loss or damage.

16. General Indemnity. Lessee assumes liability for, and shall indemnify, protect, save and keep harmless Lessor, Lender, and their respective agents, servants, successors and assigns (each of whom shall be called an "Indemnatee") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including legal expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against any Indemnatee, in any way relating to or arising out of this Lease or the enforcement hereof, or the manufacture, purchase, acceptance, rejection, ownership, possession, use, selection, delivery, lease, operation, condition, sale, return or other disposition of the Equipment or any part thereof (including, without limitation, latent or other defects, whether or not discoverable by Lessee or any other person, any claim in tort for strict liability and any claim for patent, trademark or copyright infringement); provided, however, that Lessee shall not be required to indemnify an Indemnatee for loss or liability arising from acts or events which occur after the Equipment has been returned to Lessor in accordance with this Lease, or for loss or liability resulting solely from the

willful misconduct or gross negligence of such Indemnitee. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

17. Events of Default. The following events shall each constitute an event of default (herein called "Event of Default") under this Lease:

(i) Lessee shall fail to make any payment of rent or other amount owing hereunder within 10 days after the same is due; or

(ii) Lessee shall fail to maintain the insurance required by Section 9 hereof, or to perform or observe any of the covenants contained in Section 20 hereof; or

(iii) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it with respect to this Lease and such failure shall continue unremedied for 30 days after the earlier of (a) the date on which Lessee obtains knowledge of such failure; or (b) the date on which notice thereof shall be given by Lessor or Lender to Lessee; or

(iv) Any representation or warranty made by Lessee herein, or by Lessee in any document, certificate or financial or other statement now or hereafter furnished Lessor or Lender in connection with this Lease shall prove at any time to have been untrue or misleading in any material respect as of the time when made; or

(v) Lessee shall (A) default in the payment of any obligation for borrowed money, under any capitalized lease or for the deferred purchase price of property, including interest thereon, beyond the period of grace, if any, provided with respect thereto, or (B) default in the performance or observance of any other term, condition, or agreement contained in any such obligation or in any agreement relating thereto, if the effect of such default is to cause, or permit the holder or holders of such obligation (or trustee on behalf of such holder or holders) to cause such obligation to become due prior to the stated maturity or to realize upon any collateral given as security therefor; or

(vi) the entry of a decree or order for relief by a court having jurisdiction in respect of Lessee, adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment, or composition of or in respect of Lessee in a voluntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or similar official) of Lessee or of any substantial part of property of Lessee, or ordering the winding up or liquidation of the affairs of Lessee, and the continuance of any such decree or order unstayed and in effect for a period of 60 days; or

(vii) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by Lessee to the institution of bankruptcy or insolvency proceedings against it, or the commencement by Lessee of a voluntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Lessee to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, or sequestrator (or other similar official) of Lessee or of any substantial part of the property, or the making by Lessee of any assignment for the benefit of creditors or the admission of its inability to pay its debts generally as they become due or its willingness to be adjudicated a bankrupt or the failure of Lessee generally to pay its debts as they become due or the taking of corporate action by Lessee in furtherance of any of the foregoing.

18. Remedies. If an Event of Default shall occur and be continuing Lessor may, at its option, declare this Lease to be in default; and at any time thereafter Lessor may do any one or more of the following with respect to all of the Equipment or any part thereof as Lessor in its sole discretion shall elect, to the extent permitted by applicable law then in effect:

(a) demand that Lessee, and Lessee shall at its expense upon such demand, assemble and return the Equipment promptly to Lessor at such place in the continental United States of America as Lessor shall specify, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of the Equipment and remove the same by summary proceedings or otherwise, all without liability for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(b) sell the Equipment at public or private sale, with or without notice, advertisement or publication, as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Equipment as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto;

(c) by written notice to Lessee specifying a payment date which shall be not earlier than 20 days after the date of such notice, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, all accrued and unpaid rent for the Equipment due on all Rent Payment Dates up to and including the payment date specified in such notice plus an amount (together with interest on such amount at the rate of 18% per annum or, if lower, the highest rate of interest permitted by applicable law, from the payment date specified in such notice to the date of actual payment) equal to the excess, if any, of the Stipulated Loss Value of the Equipment as of the payment date specified in such notice over the Fair Market Sale Value, if any, of the Equipment as of such date;

(d) Lessor may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease.

In addition, Lessee shall be liable for any and all unpaid rent and other amounts due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessee's remedies with respect thereto, including all costs and expenses incurred in the connection with the placing of the Equipment in the condition required by Section 11 hereof.

No remedy referred to in this Section 18 is intended to be exclusive but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor at law or in equity; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. No express or implied waiver by Lessor or Lender of an Event of Default shall in any way be, or be construed to be a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, or lease or otherwise use the Equipment in mitigation of Lessor's damages or losses or which may otherwise limit or modify any of Lessor's rights or remedies under this Lease.

19. **Lessor's and Lender's Right to Perform.** If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, Lessor or Lender may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor and Lender incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the rate of 18% per annum, or if lower, the highest rate of interest permitted by applicable law, shall be deemed to be additional rent, payable by Lessee on demand.

20. **Location; Assignment or Sublease by Lessee; Assignment by Lessor.**

(a) Except as may be required in the normal course of Lessee's business, Lessee will not remove the Equipment from the location specified in the Supplement without the prior written consent of Lessor and Lender. The Equipment shall at all times be operated in conformance with Lessee's normal business practices and in conformance with all rules and regulations governing the use and operation of the Equipment, including, but not limited to, the rules of the American Association of Railroads, and Lessee will not, without the prior written consent of Lessor and Lender, assign this Lease or any interest herein or sublease or otherwise transfer its interest

in any of the Equipment, and any attempted assignment, sublease or other transfer by Lessee in violation of these provisions shall be void provided, however, that Lessee may trip lease the Equipment to its customers in the normal course of Lessee's business.

(b) Lessee acknowledges and consents that, under the Loan Agreement, this Lease and all rents and other sums due or to become due hereunder (including but not limited to insurance proceeds, payments of Stipulated Loss Value, late charge, and purchase option payments, but not payments which may become due under Section 10(b) hereof) have been or will be assigned by Lessor to Lender, and Lessor has granted or will grant to Lender a first priority security interest in the Equipment and the proceeds thereof and in the Lease and the Letter of Credit referred to in Section 27 hereof, the rents and other sums due or to become due, and the proceeds thereof, (but not payments which may become due under Section 10(b) hereof). Lessee and Lessor agree that the rent and other sums payable by Lessee hereunder shall be paid directly to Lender or upon its written order. Without limiting the foregoing or any of the provisions of Section 4(d) hereof, Lessee further acknowledges and agrees that (i) the rights of Lender in and to the sums payable by Lessee under any provision of this Lease shall not be subject to any defense, set-off, counterclaim or recoupment, whatsoever whether by reason or failure of or defect in Lessor's title, or any interruption from whatever cause in the use, operation or possession of the Equipment or any item thereof, or any damage to or loss or destruction of the Equipment or any item thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of Lessor to Lessee or to any other person or for any cause whatsoever, it being the intent hereof that Lessee shall be unconditionally and absolutely obligated to pay directly to Lender all of the rent and other sums payable by it hereunder; (ii) Lessee's representations and warranties in this Lease (including, without limitation, in Section 7 hereof) shall be deemed to be made to and for the benefit of Lender as well as Lessor; (iii) until the Note and all other indebtedness of Lessor to Lender under the Loan Agreement have been paid in full, (A) all rights of Lessor under this Lease shall be exercisable by Lender, as assignee and secured party, and such rights shall not be subject to any defense, counterclaim or set-off against Lender that Lessee may have or assert against Lessor, (B) Lessee shall obtain the consent or approval of Lender prior to taking any action for which the consent or approval of Lessor is required by the terms of this Lease and (C) Lender shall be entitled to the benefit of all covenants and obligations to be performed by Lessee under this Lease (including, without limitation, the right to receive copies of all notices by Lessee to Lessor hereunder). Lessee and Lessor acknowledge that all obligations of Lessor to Lessee under this Lease shall be and remain enforceable by Lessee against, and only against Lessor. Without the prior written consent of Lender, Lessee will not permit or agree to the termination, cancellation, amendment, modification, waiver, or other alteration of any of the terms of this Lease or any related document or consent to the further pledge or assignment of the Lease or any rights thereunder by Lessor to any other party whatsoever. Lessee acknowledges receipt of an executed counterpart of the Loan Agree-

ment. TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART MARKED "ORIGINAL" AND CONTAINING THE RECEIPT THEREFOR EXECUTED BY LENDER ON THE SIGNATURE PAGE THEREOF.

21. Further Assurances; Financial Information.

(a) Lessee will, at its expense, promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor or Lender may from time to time request in order to more effectively carry out the intent and purpose of this Lease and to establish and protect the rights, interests and remedies created or intended to be created in favor of Lessor and Lender hereunder, including, without limitation, the execution and filing of Uniform Commercial Code financing statements in the jurisdictions in which the Equipment is located from time to time and the execution or filing of any filings, statements or other documents required or permitted by the Interstate Commerce Commission. To the extent permitted by applicable law, Lessee hereby authorized Lessor and Lender to file any such filings, statements or documents without the signature of Lessee.

(b) Lessee will furnish to Lessor and Lender (a) as soon as available, but in any event not later than 120 days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such fiscal year, and consolidated statements of income and changes in financial position of Lessee for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and audited by Arthur Young or such other certified public accountants acceptable to Lessor and Lender; (b) as soon as available, but in any event not later than 60 days after the end of each of the first three quarterly periods of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such quarterly period and a consolidated statement of income of Lessee for such quarterly period and for the portion of the fiscal year ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the chief financial officer of Lessee; and (c) upon receipt by Lessee, financial statements of Lessee's parent company prepared in accordance with the foreign standards applicable to them.

22. Notices. All notices, demands, and other communications hereunder shall be in writing, and shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed as follows or to such other address as any of the following persons may from time to time designate in writing to the other persons listed below:

Lessor: National Funding Corporation
3200 Park Center Drive
Costa Mesa, California 92626
Attention: Vice President/Finance

with a copy to: Texas Commerce Bank National Association
as Trustee of the National
Funding Equipment Trust
Texas Commerce Tower
Eighth Floor
Houston, Texas 77252
Attention: John Phillips

with an additional copy to: O'Melveny & Myers
610 Newport Center Drive
Suite 1700
Newport Beach, California 92660
Attention: Richard H. Zimmerman, Esq.

Lessee: Soltex Polymer Corporation
3333 Richmond Avenue
Houston, Texas 77098
Attention: Treasurer

with a copy to: Soltex Polymer Corporation
3333 Richmond Avenue
Houston, Texas 77098
Attention: Vice President &
General Counsel

Lender: First Nationwide Savings
c/o FNS Corporate Funding
100 Tiburon Boulevard
Mill Valley, California 94941
Attention: Henry Salmon

with a copy to: Dinkelspiel & Dinkelspiel
One Market Plaza
Steuart Street Towers
18th Floor
San Francisco, California 94105
Attention: Barry Dubin, Esq.

23. Conditions Precedent.

(a) Lessor shall not be obligated to accept and execute the Supplement or to lease any Equipment to Lessee hereunder unless:

(i) Lessor shall have received a copy of resolutions of the Board of Directors of Lessee, certified by the Secretary or an Assistant Secretary of Lessee as of the date of the Supplement, authorizing the execution, delivery and performance by Lessee of this Lease and the Supplement;

(ii) Lessor shall have received an incumbency and signature certificate of Lessee, dated the date of the Supplement and in form and substance satisfactory to Lessor, setting forth the names and signatures of each officer of Lessee authorized to sign this Lease, the Supplement and all other instruments and documents relating thereto, which certificate may be relied on by Lessor until it receives written notice to the contrary;

(iii) Lessor and Lender shall have received an opinion of counsel for Lessee satisfactory to Lessor, dated the date hereof and in form and substance satisfactory to Lessor, to the same effect as clauses (a), (b), (c), (d), and (g) of Section 7 hereof, and as to such other matters as Lessor may reasonably request;

(iv) Lessor shall have received evidence satisfactory to it as to the due compliance by Lessee with the provisions regarding insurance contained in Section 9 hereof;

(v) Lessor shall have received information satisfactory to it establishing that Lessee has not exceeded the "capital expenditure" limitation under Section 103(b)(5)(D)(ii) of the Code, applicable to its facility in Harris County, Texas and that no part of the Lessor's Cost of the Equipment will be considered a "capital expenditure" of Lessee for purposes of Section 1.103.10(b)(2)(iv)(b) of the Income Tax Regulations;

(vi) Lessor shall have received good and marketable title to such Equipment, free and clear of Liens;

(vii) Lessor shall have received evidence satisfactory to it as to the proper calculation of the amount of Lessor's Cost of such items of Equipment and shall be satisfied that all amounts included in Lessor's Cost have been, or concurrently with Lessor's acceptance of the Supplement will be paid in full;

(viii) Such Uniform Commercial Code financing statements and Interstate Commerce Commission filings with respect to the items of Equipment covered by such Supplement as Lessor shall deem necessary or desirable in order to perfect and protect its interests therein shall have been duly executed and filed, at Lessee's expense, in such public offices as Lessor shall direct;

(ix) All representations and warranties of Lessee contained herein or in any document or certificate furnished Lessor in connection herewith shall be true and correct on and as of the date of the Supplement with the same force and effect as if made on and as of such date; no Event

of Default or Default shall be in existence on such date or shall occur as a result of the lease by Lessee of the Equipment specified in the Supplement;

(x) In the sole judgment of Lessor, there shall have been no material adverse change in the financial condition or business of Lessee from that set forth in Lessee's unaudited financial statements dated September 30, 1984;

(xi) All proceedings to be taken in connection with the transactions contemplated by this Lease, and all documents incidental thereto, shall be satisfactory in form and substance to Lessor and its counsel;

(xii) Lessor shall have received from Lessee, in form and substance satisfactory to it, such other documents and information as Lessor shall reasonably request; and

(xiii) All legal matters in connection with the transactions contemplated by this Lease and the Supplement shall be satisfactory to Lessor's counsel.

24. Miscellaneous.

(a) Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision thereof prohibited or unenforceable in any respect.

(b) No terms or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No delay or failure on the part of Lessor or Lender to exercise any power or right hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. After the occurrence of any Default or Event of Default, the acceptance by Lessor or Lender of any payment of rent or other sum owed by Lessee pursuant hereto shall not constitute a waiver by Lessor or Lender of such Default or Event of Default, regardless of Lessor's or Lender's knowledge or lack of knowledge thereof at the time of acceptance of any such payment, and shall not constitute a reinstatement of this Lease if this Lease shall have been declared in default by Lessor pursuant to Section 18 hereof or otherwise, unless Lessor and Lender shall have agreed in writing to reinstate the Lease and to waive the Default or Event of Default.

(c) This Lease contains the full, final and exclusive statement of the agreement between Lessor and Lessee relating to the lease of the Equipment.

(d) This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in the Equipment except as Lessee only.

(e) This Lease and the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, Lessor, Lender, and their respective successors and assigns and Lessee and, to the extent permitted by Section 20 hereof, its successors and assigns.

(f) The headings of the Sections are for convenience of reference only, are not a part of this Lease and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

(g) This Lease may be executed by the parties hereto on any number of separate counterparts, only one of which (so designated) when so executed and delivered shall be the original.

(h) This Lease shall be governed by and construed in accordance with the laws of Texas.

(i) The amount of Rent payments and the Stipulated Loss Values with respect to the Equipment shall be appropriately adjusted to reflect any amendment to, or change in, the Internal Revenue Code of 1954, as amended (the "Code"), the income tax regulations thereunder, or published administrative or judicial interpretations of the Code or such regulations, which change or amendment is enacted or adopted by current tax legislation of the 99th Congress or which change or amendment is proposed (by introduction of legislation, publication in the Federal Register, court decision or comparable procedures) and which change shall have an effective date prior to the Commencement Date so as to preserve for the Lessor the Net Return that the Lessor would have realized if such change or amendment had not occurred. The Lessor shall notify the Lessee of any such amendment or change within 120 days after such amendment or change. As promptly as feasible after such notification, the Lessor shall furnish the Lessee with a notice setting forth the amount of such adjustments.

(k) Lessee hereby irrevocably consents and agrees that any legal action, suit, or proceeding arising out of or in any way in connection with this Lease may be instituted or brought in the courts of the State of California or the United States District Court for the Central District of California. Lessor or Lender may elect, and by execution and delivery of this Agreement, Lessee hereby irrevocably accepts and submits to, for itself and in respect to its property, generally and unconditionally, the non-exclusive jurisdiction of any such court, and to all proceedings in such courts. Lessee irrevocably consents to service of any summons and/or legal process by registered or certified United States air mail, postage prepaid,

to Lessee at the address set forth in Section 22 hereof, such method of service to constitute, in every respect, sufficient and effective service of process in any legal action or proceeding. Nothing in this Lease shall affect the right to service of process in any other manner permitted by law or limit the right of Lessor to bring actions, suits or proceedings in the court of any other jurisdiction. Lessee further agrees that final judgement against it in any such legal action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction, within or outside the United States of America, by suit on the judgement, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of the liability.

25. Lessor's Representations and Warranties. Lessor represents and warrants to Lessee that:

(a) Lessor is a corporation in the trade or business of leasing personal property.

(b) Based upon the description of the Equipment covered hereby provided to Lessor by Lessee, Lessor is familiar with the nature of the Equipment covered hereby, and has equipment of the same or similar nature in the past.

(c) Lessor intends to treat the lease of Equipment under this Lease as a lease upon its books and records.

(d) Lessor shall, from its own funds, contribute at least twenty percent of the cost of each item of Equipment leased hereunder, and at all times during the term of this Lease shall have and maintain at least a 20% unconditional at-risk investment in the Equipment.

(e) Lessor has performed the analysis described in Section 4.02(5) of Revenue Procedure 75-28 (1975-1 C.B. 752) and has determined in its opinion that the lease of equipment made by this Lease meets the test set forth in such Section.

(f) Lessor has performed the analysis described in Section 4.07(1) of Revenue Procedure 75-28 (1975-1 C.B. 752) and has determined in its opinion that the lease of equipment made by this Lease meets the test set forth in such Section.

(g) Lessor has performed the analysis described in Section 4.07(2) of Revenue Procedure 75-28 (1975-1 C.B. 752) and has determined in its opinion that the lease of equipment made by this Lease meets the test set forth in such Section.

26. Lessee's Quiet Enjoyment. So long as Lessee shall pay and perform all of its obligations and covenants hereunder, its quiet enjoyment of the Equipment shall not be disturbed by any party lawfully claiming by, through or under Lessor. By acceptance of any assignment of this Lease,

any assignee hereof agrees, with and for the benefit of Lessee, that as long as Lessee shall perform all of its obligations and covenants hereunder, and notwithstanding any default of Lessor, Lessee's quiet enjoyment shall not be disturbed by such assignee or any party lawfully claiming by, through or under such assignee.

27. **Additional Assurances.** The obligations and covenants of Lessee to Lessor under this Lease and the Supplement shall be secured by an irrevocable Letter of Credit, in the amount, on the terms and in the form of Exhibit C hereto, issued by Manufacturers Hanover Trust Company, in favor of Lessor. The Letter of Credit (and any extensions thereof) shall be assignable by Lessor to Lender. Lessee's failure to provide any extension or renewal of the required Letter of Credit in accordance with its terms shall constitute a default of Lessee's obligations under this Lease entitling Lessor or Lender to promptly call upon the then outstanding Letter of Credit in the full amount thereof. In the event of such a call, the Lessor or Lender, as the case may be, shall hold the funds so obtained in escrow as security for any and all obligations of Lessee under this Lease. The cost of any such escrow shall be deducted from the escrowed proceeds. The escrow holder will promptly pay to the Lessor or Lender the funds it holds in escrow upon delivery of a certificate dated and signed by an officer of either Lessor or Lender stating that Lessee is in default of a payment or obligation under the Lease and that ten (10) days have elapsed since the date of the Default without payment thereon and that the amount requested is properly due and payable in accordance with the terms of this Lease. Any funds held in escrow upon the expiration of the term of this Lease which are not needed to satisfy an obligation of Lessee to Lessor or Lender shall promptly be returned to Lessee. Upon Lessee's attainment of three consecutive years of profitable results from operations, Lessor agrees to reevaluate this requirement of additional security to the extent it is not required to secure Lessor's obligations to Lender under the Loan Agreement. Such reevaluation shall consist of an evaluation of Lessee's revenues, pretax income, after tax income and net worth position. The determination of whether a modification of this additional security requirement will be made shall be in the sole discretion of Lessor. Notwithstanding the foregoing, in no event, other than a draw under the Letter of Credit pursuant to its terms and this section, shall the amount of the Letter of Credit be reduced below the amount of the outstanding principal balance payable by Lessor to Lender pursuant to the Note.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Master Lease Agreement as of the date first set forth above.

NATIONAL FUNDING CORPORATION,
a California corporation

By: 

Title: President

SOLTEX POLYMER CORPORATION
a Delaware corporation

By: 


Title: Executive Vice President

State of Texas)
)
County of Harris)

On this 23d day of May, in the year 1985, before me Deloyse D. Boone, personally appeared Yves Secousse, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Executive Vice President on behalf of the corporation therein named and acknowledged to me that the corporation executed it pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Deloyse D. Boone
Notary Public

DELOYSE B. BOONE
Notary Public in and for Harris County, Texas
My Commission Expires: 4-9-88

State of California,)
)
)
County of Orange)

On this 22nd day of May, in the year 1985, before me
Sharon Dorcsak, personally appeared J. Paul Buchanan,
personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person who executed the within instrument as
President on behalf of the corporation therein named and
acknowledged to me that the corporation executed it pursuant to its
bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Sharon Dorcsak

My commission expires 11-12-86

EXHIBIT A

Ninety (90) 100 Ton 5800 cubic foot Special Covered Hoppers built to specification HC-100-58-109B 10/11/83 equipped with Dev-Mark Stainless Steel hatch covers and Edsco Gates.

EXHIBIT B

LEASE SUPPLEMENT

THIS LEASE SUPPLEMENT, dated May __, 1985, is between NATIONAL FUNDING CORPORATION, a California corporation ("Lessor"), and SOLTEX POLYMER CORPORATION, a Delaware corporation ("Lessee").

RECITALS

Lessor and Lessee have entered into that certain Master Lease Agreement dated as of May __, 1985 (the "Lease", and the terms defined therein being used herein shall have the same meaning unless otherwise defined) which provides for the execution and delivery of a Lease Supplement in substantially the form hereof for the purpose of accepting and leasing the items of the Equipment specified in such Lease Supplement in accordance with the terms and conditions specified in the Lease and such Lease Supplement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Lessor hereby delivers and leases to Lessee, and Lessee hereby accepts and leases from Lessor, each item of equipment described in Schedule 1 attached hereto and by this reference made a part hereof pursuant to and in accordance with the terms of the Lease and this Lease Supplement.

2. Lessee hereby agrees to pay Lessor rent for each item of the Equipment throughout the term therefor in accordance with the Lease.

3. All of the terms and provisions of the Lease are hereby incorporated herein by this reference and are hereby ratified and approved.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease Supplement to be duly executed on the date first written above.

LESSOR:

LESSEE:

NATIONAL FUNDING CORPORATION

SOLTEX POLYMER CORPORATION

By: 

By: _____

Title: Vice President Finance

Title: _____

SCHEDULE A

STIPULATED LOSS VALUE SCHEDULE

Rental Date	Stipulated Loss Value	Rental Date	Stipulated Loss Value	Rental Date	Stipulated Loss Value
4/30/94	83.24	4/30/97	68.77	4/30/00	52.58
5/30/94	82.85	5/30/97	68.35	5/30/00	52.06
6/30/94	82.47	6/30/97	67.93	6/30/00	51.56
7/30/94	82.09	7/30/97	67.51	7/30/00	51.04
8/30/94	81.70	8/30/97	67.08	8/30/00	50.51
9/30/94	81.31	9/30/97	66.66	9/30/00	49.98
10/30/94	80.92	10/30/97	66.24	10/30/00	49.46
11/30/94	80.53	11/30/97	65.81	11/30/00	48.93
12/30/94	80.14	12/30/97	65.40	12/30/00	48.40
1/30/95	79.75	1/30/98	64.98	1/30/01	47.87
2/30/95	79.36	2/30/98	64.55	2/30/01	47.32
3/30/95	78.97	3/30/98	64.13	3/30/01	46.78
4/30/95	78.57	4/30/98	63.71	4/30/01	46.23
5/30/95	78.15	5/30/98	63.28	5/30/01	45.67
6/30/95	77.78	6/30/98	62.86	6/30/01	45.12
7/30/95	77.38	7/30/98	62.43	7/30/01	44.56
8/30/95	76.97	8/30/98	61.99	8/30/01	43.98
9/30/95	76.57	9/30/98	61.54	9/30/01	43.41
10/30/95	76.17	10/30/98	61.10	10/30/01	42.84
11/30/95	75.76	11/30/98	60.66	11/30/01	42.26
12/30/95	75.36	12/30/98	60.22	12/30/01	42.68
1/30/96	74.96	1/30/99	59.77	1/30/02	41.10
2/30/96	74.55	2/30/99	59.31	2/30/02	40.51
3/30/96	74.15	3/30/99	58.86	3/30/02	39.92
4/30/96	73.74	4/30/99	58.40	4/30/02	39.32
5/30/96	73.33	5/30/99	57.92	5/30/02	38.71
6/30/96	72.92	6/30/99	57.46	6/30/02	38.11
7/30/96	72.71	7/30/99	56.99	7/30/02	37.50
8/30/96	72.09	8/30/99	56.50	8/30/02	36.88
9/30/96	71.67	9/30/99	56.02	9/30/02	36.25
10/30/96	71.26	10/30/99	55.54	10/30/02	35.64
11/30/96	70.84	11/30/99	55.05	11/30/02	35.03
12/30/96	70.43	12/30/99	54.57	12/30/02	34.42
1/30/97	70.02	1/30/2000	54.08	1/30/03	33.80
2/30/97	69.60	* 2/30/00	53.58	2/30/03	33.19
3/30/97	69.19	< 3/30/00	43.08	3/30/03	32.59

EXHIBIT C

DRAFT IRREVOCABLE DOCUMENTARY CREDIT

Place and Date of Issue:
 New York, N.Y.
(Date of Issue)

Date and Place of Expiry:
 June 1, 1986
New York, N.Y.

Applicant:
 Soltex Polymer Corporation
 3333 Richmond Avenue
Houston, Texas 77098

Beneficiary:
 First Nationwide Savings
 c/o FNS Corporate Funding
 100 Tiburon Boulevard
Mill Valley, California 94941

Please direct all correspond-
 ence in connection with this
 Letter of Credit to Attention:
 Standby Letter of Credit
 Department

Amount:
 \$5,676,486.00
 Credit Available With:
 Manufacturers Hanover Trust
 Company, New York, N.Y.
 By: Payment against present-
 ation of the documents detailed
 herein and of your drafts at
 sight drawn on Manufacturers
 Hanover Trust Company, New York,
 N.Y.

Documents required:

Your statement purportedly signed by one of your officials reading:
 "The amount of this drawing \$ _____ under Manufacturers Hanover
 Trust Company L/C No. S/C _____ represents an amount which
 we are entitled to draw under said Letter of Credit as an event of
 default has occurred under the Lease Agreement dated as of May 22, 1985
 between National Funding Corporation and Soltex Polymer Corporation
 and the applicable cure period with regard to such event of default
 has expired."

OR

"The amount of this drawing \$ _____ under Manufacturers
 Hanover Trust Company L/C No. S/C _____ represents an amount
 which we are entitled to draw under said Letter of Credit as thirty
 days or less exist until the expiration of said Letter of Credit
 and Soltex Polymer Corporation has failed to cause the expiration
 date of said Letter of Credit to be extended for a period of one
 year or to have issued in our favor a replacement Letter of Credit
 pursuant to the Lease Agreement dated as of May 22, 1985 between
 Soltex Polymer Corporation and National Funding Corporation."

Partial drawings are not permitted.

We hereby issue this Documentary Credit in your favor. It is subject
 to the Uniform Customs and Practice for Documentary Credits 1983 revision,
 International Chamber of Commerce, Paris, France, Publication No. 400.
 The number and the date of the Credit and the name of our Bank must
 be quoted on all drafts required.

DISTRICT OF COLUMBIA ss:

I, Margaret C. Blake, a Notary Public in and for said District of Columbia, do certify that on the 28th day of May 1985 I carefully compared the attached facsimile of the Master Lease Agreement between National Funding Corporation and Soltex Polymer Corporation and the facsimile I now hold in my possession. They are complete, full, true and exact facsimiles of the document they purport to reproduce. Witness my hand and official seal.

Margaret C. Blake

My Commission Expires May 14, 1988